



CITY OF HAYWARD

AGENDA REPORT

AGENDA DATE 03/25/03

AGENDA ITEM 3

WORK SESSION ITEM

TO: Mayor and City Council

FROM: Director of Community and Economic Development

SUBJECT: Administrative Citations Ordinance

RECOMMENDATION:

It is recommended that City Council introduce the attached Administrative Citations Ordinance.

DISCUSSION:

Most City residents quickly comply with Notices to Abate community preservation, weed abatement, sign, and zoning violations. However, approximately 20% of those who have violations make little or no effort to abate them. There are likely many reasons for this. Recognizing that some people are unable to remove the violations themselves, Council created the Help Fund to abate violations for seniors and people with disabilities.

However, there remain some individuals who take an excessive amount of time to abate violations. For example, staff has been working with a property owner to remove illegal outdoor storage and abate weeds. Since 2000, the owner of this industrial property has used every tactic available to delay the process. Another example is of a property owner who has been noticed for the third violation within three years due to a major accumulation of debris in his residential rear yard. The owner's second violation for this same offense took a year and half to resolve. At any given time, there are approximately fifteen property/business owners who utilize the current process to avoid abating violations. In these instances, staff is forced to go to court to obtain a warrant to enter the property and abate the public nuisance. This process may take six months or more since the court often postpones enforcement to give the responsible party yet another opportunity to abate.

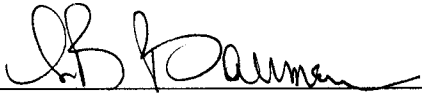
For some time, City staff have looked for ways to encourage swifter compliance. Amendments to State law allow cities to make the violation of any Ordinance subject to an administrative fine or penalty. In order to do so, cities must set forth by Ordinance the administrative procedures that govern the imposition, enforcement, collection and administrative review of the fines or penalties. The proposed Administrative Citations Ordinance is designed to provide the City with another option to encourage voluntary compliance with the provisions of various City Ordinances. The difference between administrative and judicial citations (the type currently used by the City) is that administrative citations do not require that the City utilize the court

system. Judicial citations take an average of 1½ years to gain compliance. There are some cases where compliance has never occurred, the responsible party has simply paid the citation, usually after several court hearings and postponements.

The administrative citations process would be as follows. When a violation occurs, the party responsible for the violation would be issued a Correction Notice describing the date, time, location and specifics of the violation; the date by which correction is to be made; the monetary consequences of the failure to comply and the appeal process. Because the goal of the program is compliance, rather than the imposition of a fine or penalty, the fine would only be imposed where the responsible party fails or refuses to make the necessary correction(s) in a timely fashion. If the corrections have not been made by the compliance date, an Administrative Citation will be issued. If the responsible party wants to appeal the facts of the violation, s/he could request an administrative hearing. A hearing officer, who is not an employee of the City, would conduct a formal hearing where the responsible party could present evidence that the violation did not occur or that the party was cited in error. The hearing officer would render a formal opinion on the case. If the opinion rendered was that the citation for violation was correct, the responsible party would be given time to correct the violation, prior to a fine or penalty being imposed. Currently, there are several mediation services in the East Bay that provide administrative hearing officers for cities. The City could contract with such a service to provide a trained and experienced hearing officer.

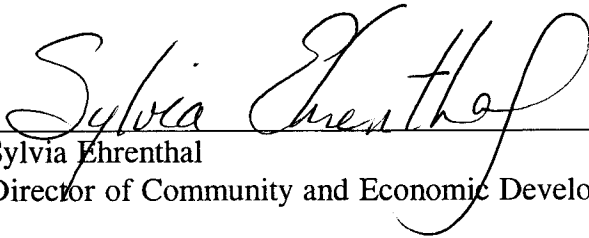
In addition to the Community Preservation Program, administrative citations can be utilized for illegal construction activity and for rental housing code violations that an owner refuses to repair. Administrative citations would not replace the current process and procedures available to obtain compliance, rather, they provide additional incentive for compliance by imposing fines and/or penalties. Further, this remedy can be used in conjunction with other methods so that concurrent or consecutive methods can be used to achieve compliance on continuing violations.

Prepared by:




Ann R. Bauman, Neighborhood and
Economic Development Manager

Recommended by:



Sylvia Ehrenthal
Director of Community and Economic Development

Approved by:



Jesús Armas, City Manager

Attachment: Draft Ordinance

DRAFT

Ordinance No. 03-

ORDINANCE AMENDING CHAPTER 1, ARTICLE 3
OF THE HAYWARD MUNICIPAL CODE RELATING
TO ADMINISTRATIVE CITATIONS

Section 1: Section 3.05 of Chapter 1, Article 3 of the Hayward Municipal Code is hereby amended to read as follows:

“Section 1-3.05 Liability for Costs.

In addition to the punishment provided by law, a violator convicted of a misdemeanor or infraction or who is issued an Administrative Citation, shall be liable for any fines and penalties assessed, and fees, costs, expenses or disbursements paid or incurred by the City or any of its contractors in connection with, the abatement of, or the prosecution of the violation.”

Section 2: Sections 1-3.100 through 1-3.200 are hereby added to Chapter 1, Article 3 of the Hayward Municipal Code to read as follows:

“Section. 1-3.100 Findings and Purpose.

The City Council finds that there is a need for an alternative method of enforcement for minor violations of the Municipal Code and applicable State Codes. The City Council further finds that an appropriate method of enforcement for minor violations is an Administrative Citation Program as authorized by Government Code Section 53069.4.

The procedures established in this Article shall be in addition to civil, criminal or other legal remedy established by law, which may be pursued to address violations of the Municipal Code or applicable State Codes.

The City Council hereby finds and determines that enforcement of the City of Hayward Municipal Code, other ordinances adopted by the City, and conditions on entitlements are matters of local concern and serve important public purposes. Consistent with its powers as a Charter City, the City of Hayward adopts this Administrative Citation Program provision in order to achieve the following goals:

1. To protect the public health, safety and welfare of the citizens of the City of Hayward;
2. To gain compliance with the Municipal Code and State Codes, Ordinances and regulations in a timely and efficient manner;

3. To provide for an administrative process to appeal the imposition of Administrative Citations and fines;
4. To provide a method to hold parties responsible when they fail or refuse to comply with the provisions of the Municipal Code, other ordinances adopted by the City, and conditions on entitlements;
5. To minimize the expense and delay where the sole remedy is to pursuer responsible parties in the civil or criminal justice system.

Use of this Article shall be at the sole discretion of the City.

Section. 1-3.110 Correction Notice and Administrative Citations Service Procedures

Upon a finding by the City official vested with the authority to enforce the various provisions of the Municipal Code, other ordinances adopted by the City, and conditions on entitlements that a violation exists, he or she may issue a Correction Notice or an Administrative Citation under the provisions of this Article.

Section. 1-3.120 Correction Notice and Administrative Citations Service Procedures

A Correction Notice will be issued to the responsible party as a warning the first time a violation occurs. If the violation is not corrected by the compliance date, an Administrative Citation will be issued for the violation(s) with appropriate fine(s).

Whenever a Correction Notice or Administrative Citation is issued, such notice may be given by either personal delivery to the person to be notified, by posting same on real property owned by the responsible party or by deposit in the United State Mail, in a sealed envelope postage prepaid, addressed to such person to be notified at his last known business or residence address as the same appears in the last equalized county assessment roll or as known to the Enforcement Officer. Service by mail shall be deemed completed at the time of deposit in the United States Mail receptacle is made. The failure of any person to receive notice properly given shall not affect the validity of any proceedings hereunder.

The Enforcement Officer may attempt to locate and personally serve the responsible party and obtain his or her signature on the Administrative Citation. If the responsible party served refuses or fails to sign the Administrative Citation, the failure or refusal to sign shall not affect the validity of the Administrative Citation or of subsequent proceedings.

Section 1-3.130 Contents of Notices.

Each Correction Notice shall contain the following information:

- A. Date, approximate time, and address or definite description of the location where the violation(s) was observed;
- B. The Code sections or conditions violated and a description of the violation(s);
- C. An order to the responsible party to correct the violations within the time specified (compliance date), and an explanation of the consequences of failure to correct the violation(s) including the fine for the violation;
- D. The name and signature of the Enforcement Officer.

Each Administrative Citation shall contain the following information:

- A. Date, approximate time, and address or definite description of the location where the violation(s) was observed;
- B. The Code sections or conditions violated and a description of the violation(s);
- C. An order to the responsible person to correct the violations within the time specified (compliance date), and an explanation of the consequences of failure to correct the violation(s) including the fine for the violation;
- D. The amount of the fine for the violation(s);
- E. An explanation of how the fine shall be paid and the time period by which it shall be paid;
- F. Identification of rights of appeal, including the time within which the citation may be contested and the place to obtain a Request For Hearing Form to contest Administrative Citation; and
- G. The name and signature of the Enforcement Officer.

Section 1-3.140 Satisfaction of Administrative Citation.

Upon receipt of a Correction Notice, the responsible party must do the following:

- A. Remedy the violation(s). If the violation(s) is corrected before the compliance date provided, no fine shall be imposed.

Upon receipt of an Administrative Citation, the responsible party must do the following:

- B. Pay the fine to the City within fifteen (15) days from the date the Administrative Citation was issued. All fines assessed shall be payable to the City of Hayward. Payment of a fine shall not excuse or discharge the failure to correct the violation(s) nor shall it bar further enforcement action by the City, and
- C. Remedy the violation(s). If the responsible person fails to correct the violation(s), subsequent Administrative Citations may be issued for the same violation(s). The amount of the fine for failure to correct the violation shall increase at a rate specified in this Article or in the Master Fee Resolution.

Section 1-3.150 Appeal of Administrative Citation.

Any recipient of an Administrative Citation, may contest that there was a violation of the Municipal Code, other ordinances adopted by the City, or conditions on entitlements; or contest that he or she is the responsible party by completing a Request For Hearing Form and returning it to the City within ten (10) days from the date the citation was issued.

Section 1-3.160 Hearing Officer.

The City Manager shall designate the Hearing Officer for the Administrative Citation hearing. The Hearing Officer shall not be a Hayward City employee. The employment, performance evaluation, compensation and benefits of the Hearing Officer, if any, shall not be directly or indirectly conditioned upon the amount of Administrative Citation fines upheld by the hearing officer.

Section 1-3.170 Hearing Procedure.

No hearing to contest an Administrative Citation before a Hearing Officer shall be held unless and until a Request For Hearing Form has been completed and submitted to the City.

A hearing before the Hearing Officer shall be set for a date that is not less than fifteen (15) and not more than thirty (30) days from the date that the request for hearing is filed in accordance with the provisions of this chapter. The person requesting the hearing shall be notified of the time and place set for the hearing at least ten days prior to the date of the hearing.

The hearing officer shall make a record of the hearing.

The Hearing Officer shall consider all relevant evidence including whether the violation(s) occurred and whether the responsible person has caused or maintained the violation(s) of the Municipal Code, other applicable State Codes, other

ordinances adopted by the City, and conditions on entitlements on the date(s) specified in the Administrative Citation.

The responsible party contesting the Administrative Citation shall be given the opportunity to testify and present witnesses and evidence concerning the citation. The failure of any recipient of the Administrative Citation to appear at the Administrative Citation hearing without a showing of good cause shall constitute a forfeiture of any fine already paid and a failure to exhaust their administrative remedies.

The Administrative Citation and any additional documents submitted by the Enforcement Officer shall constitute prima facie evidence of the respective facts contained in those documents. If the Enforcement Officer submits an additional written report concerning the Administrative Citation to the Hearing Officer for consideration at the hearing, then a copy of this report also shall be served by mail on the person requesting the hearing at least five days prior to the date of the hearing.

The Hearing Officer may continue the hearing and request additional information from the Enforcement Officer or the recipient of the Administrative Citation prior to issuing a written decision.

Section 1-3.180 Hearing Officer's Decision.

After considering all of the testimony and evidence submitted at the hearing, the hearing officer shall issue a written decision containing findings of fact and an evaluation of the sufficiency of evidence to support the finding of a violation. The written decision shall be prepared and mailed to the appellant within ten days of the conclusion of the hearing to uphold or deny of the Administrative Citation and shall list in the decision the reasons for that decision. The decision of the Hearing Officer shall be final. The recipient of the Administrative Citation shall be notified that a decision has been rendered and receive a copy of the Hearing Officer's written decision by mail.

If the Hearing Officer determines that the Administrative Citation should be upheld, then the fine amount shall be paid within five working days to the City. If the Hearing Officer determines that the Administrative Citation should be invalidated, any fine already paid to the City shall be promptly refunded.

Section 1-3.190 Failure to Pay Fines.

The failure of any person to pay the civil fines assessed by an Administrative Citation within the time specified on the citation or after an administrative hearing will result in the collection of the fine by the City. The City may pursue any available legal remedy to collect civil fines. The City may also recover its collections costs according to proof.

Section 1-3.200 Right to Judicial Review.

Any person aggrieved by an administrative decision of a Hearing Officer on the Administrative Citation may obtain review of the administrative decision by filing a petition for review with the Alameda County Superior Court in accordance with the timelines and provisions as set forth in California Government Code Section 53069.4.“

Section 3: Severance. Should any part of this ordinance be declared by a final decision by a court or tribunal of competent jurisdiction to be unconstitutional, invalid, or beyond the authority of the City, such decision shall not affect the validity of the remainder of this ordinance, which shall continue in full force and effect, provided that the remainder of the ordinance, absent the unexcised portion, can be reasonably interpreted to give effect to the intentions of the City Council.

Section 4. In accordance with the provisions of Section 620 of the City Charter, this ordinance shall become effective 30 days from and after the date of its adoption.